

DAVID A. TRUE,
Petitioner,
vs.
ROBERT M. OCHS, et al.,
Respondents.)
No. C 11-05220 EJD (PR)
ORDER TO SHOW CAUSE

Petitioner, a state parolee proceeding pro se, filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254, challenging his state conviction. Petitioner has paid the filing fee. (See Docket No. 2.)

BACKGROUND

According to the petition and the attachments thereto, Petitioner was found guilty by a jury in Sonoma County Superior Court of receiving a stole vehicle, altering a vehicle identity number to conceal the identity, and defacing a motor vehicle identity number. (Pet. at 2.) It appears that on June 30, 2008, Petitioner was sentenced to serve a term on parole. (*Id.*)

Petitioner appealed his conviction. The state appellate court reversed the

1 conviction for receiving stolen vehicle and affirmed the remainder, and the state
2 high court denied review in 2010. (*Id.* at 3.) Petitioner filed the instant federal
3 habeas petition on October 25, 2011.

5 DISCUSSION

6 A. Standard of Review

7 This court may entertain a petition for a writ of habeas corpus “in behalf of a
8 person in custody pursuant to the judgment of a State court only on the ground that
9 he is in custody in violation of the Constitution or laws or treaties of the United
10 States.” 28 U.S.C. § 2254(a).

11 It shall “award the writ or issue an order directing the respondent to show
12 cause why the writ should not be granted, unless it appears from the application that
13 the applicant or person detained is not entitled thereto.” *Id.* § 2243.

14 B. Legal Claims

15 Petitioner raises the following claims for federal habeas relief: (1) the
16 prosecutor made improper statements in his closing argument which improperly
17 shifted the burden of proof; and (2) Petitioner was denied his right to confront and
18 cross-examine witnesses. Liberally construed, these claims appear cognizable under
19 § 2254 and merit an answer from Respondent.

21 CONCLUSION

22 For the foregoing reasons and for good cause shown,

23 1. The Clerk shall serve by certified mail a copy of this order and the
24 petition and all attachments thereto on Respondent and Respondent’s attorney, the
25 Attorney General of the State of California. The Clerk also shall serve a copy of this
26 order on Petitioner.

27 2. Respondent shall file with the court and serve on petitioner, within
28 **sixty (60) days** of the issuance of this order, an answer conforming in all respects to

United States District Court

For the Northern District of California

1 Rule 5 of the Rules Governing Section 2254 Cases, showing cause why a writ of
2 habeas corpus should not be issued. Respondent shall file with the answer and serve
3 on Petitioner a copy of all portions of the state trial record that have been transcribed
4 previously and that are relevant to a determination of the issues presented by the
5 petition.

6 If Petitioner wishes to respond to the answer, he shall do so by filing a
7 traverse with the Court and serving it on Respondent within **thirty (30) days** of his
8 receipt of the answer.

9 3. Respondent may file a motion to dismiss on procedural grounds in lieu
10 of an answer, as set forth in the Advisory Committee Notes to Rule 4 of the Rules
11 Governing Section 2254 Cases. If Respondent files such a motion, Petitioner shall
12 file with the Court and serve on Respondent an opposition or statement of non-
13 opposition within **thirty (30) days** of receipt of the motion, and Respondent shall
14 file with the court and serve on Petitioner a reply within **fifteen (15) days** of receipt
15 of any opposition.

16 4. Petitioner is reminded that all communications with the court must be
17 served on Respondent by mailing a true copy of the document to Respondent's
18 counsel. Petitioner must also keep the Court and all parties informed of any change
19 of address.

20
21 DATED: 3/29/2012


22 EDWARD J. DAVILA
23 United States District Judge

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UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

DAVID A. TRUE,
Petitioner,

Case Number: CV11-05220 EJD

v.

ROBERT M. OCHS, et al.,
Respondents.

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I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on 3/30/2012, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

David A. True
Sonoma County Probation Department
P. O. Box 11719
Santa Rosa, CA 95406

Dated: 3/30/2012

Richard W. Wiking, Clerk
/s/By: Elizabeth Garcia, Deputy Clerk